

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 08/24/2020                      EVENT TIME: 08:20:00 AM                      DEPT.: 20  
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2018-00520146-CU-PO-VTA  
CASE TITLE: ADILENE AYALA AS SUCESSOR VS SOUTHERN CALIFORNIA

CASE CATEGORY:    Civil - Unlimited                                      CASE TYPE:    PI/PD/WD - Other

EVENT TYPE:    Motion for Summary Judgment  
CAUSAL DOCUMENT/DATE FILED:    Motion for Summary Judgment, 06/10/2020

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Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at [Courtroom20@ventura.courts.ca.gov](mailto:Courtroom20@ventura.courts.ca.gov) or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

**COVID-19 NOTICE:** Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: [www.courtcall.com](http://www.courtcall.com) or call 888-882-6878.

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The following is the Court's tentative decision concerning the motion of defendant and cross-defendant, Utility Tree Service ("UTS"), for summary judgment or, in the alternative, summary adjudication of issues and causes of action as to the Complaint of plaintiffs, Adilene Ayala, Kaylin Sampayo, Jonathan Sampayo, and Estate of Eduardo Sampayo Jimenez ("decedent") (collectively, "plaintiffs"):

**Request for Judicial Notice**

The Court GRANTS UTS's request for judicial notice of certain records in the Court's file of this action, as well as public agency regulations.

**Evidentiary Objections**

The Court SUSTAINS each and every one of the 30 objections made by defendants and cross-complainants, Southern California Edison Company and Edison International (collectively, "SCE"), to the Declaration of William Ross and associated exhibits. Mr. Ross's declaration lacks foundation, incorporates hearsay, and contains improper legal opinions and conclusions about the contracts and liabilities at issue. The Court has examined each of the objections carefully; each is well-taken.

The court SUSTAINS each and every one of the 12 objections made by SCE to the Declaration of Andy Mendoza and associated exhibits. Mr. Mendoza's declaration does not properly authenticate the evidentiary material attached to it. It is not enough to attach an evidentiary exhibit to a declaration which states that the exhibit is a true and correct copy of what it purports to be. The declarant must provide the further foundation necessary to admit the document as evidence of some relevance to the action. Mr. Mendoza's declaration fails to meet these standards in the particulars identified by the objections.

**Undisputed Material Facts ("UMF"s) and Additional Material Facts ("AMFs")**

For the limited purpose of ruling on the pending motion, the Court makes the following findings concerning the UMFs and AMFs:

Cross-referencing and comparing UTS's separate statement with the three opposition responsive separate statements, the Court finds the following UMFs are not established by the cited evidence and are materially disputed by one or more of the opposing parties: 1, 17, 19, 20, 22, 23, 26, 27, 31, 32, 33, 39, 41, 43, 45, 46, and 47.

In light of the Court's ruling on the objections as stated above, and the motion as discussed more fully below, the Court does not make any findings about the AMFs offered by opposing parties.

**Legal Principles Governing Summary Judgment/Adjudication**

Summary judgment procedure is well settled: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code of Civ. Proc., § 437c, subd. (a).) A party may also move for "summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty. . . ." (Code of Civ. Proc., § 437c, subd. (f)(1).) "The court must grant the motion if all the papers submitted show that there is no triable issue as to any material fact [citation omitted]-that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law [citations omitted]-and that the moving party is entitled to a judgment as a matter of law [citation omitted]." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855-56, 107 Cal.Rptr.2d 841, 24 P.3d 493, internal quotation marks omitted ("*Aguilar*").) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Id.*, 25 Cal.4th at p. 855, 107 Cal.Rptr.2d 841, 24 P.3d 493.) The court must construe the evidentiary showing, and all reasonable inferences therefrom, in the light most favorable to the opposing party. (*Id.*, 25 Cal.4th at p. 857, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

The Court follows a three-part test in ruling on the motion:

(a) "First, . . . the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Id.*, 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

(b) "Second, . . . the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Ibid.*)

(c) "Third, . . . how the parties moving for and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial." (*Id.*, 25 Cal.4th at p. 851, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

In determining whether a material triable issue exists, the Court must construe the evidence offered by the moving party in support of the motion strictly and the evidence offered in opposition to the motion liberally. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4<sup>th</sup> 832, 839, 89 Cal.Rptr.2d 540.) Moreover, the Court is not permitted to weigh or assess the credibility of, or resolve conflicts concerning, the evidence offered in support of or opposition to the motion; conflicts in the evidence must be resolved by the trier of fact, not the Court. (Code of Civ. Proc., §437c, subd. (e); *Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4<sup>th</sup> 1390, 1397, fn. 4, 93 Cal.Rptr.2d 763; *AARTS Productions, Inc. v. Aetna Life Ins. Co.* (1986) 179 Cal.App.3d 1061, 1064, 225 Cal.Rptr. 203.)

**Ruling on Motion**

The Court DENIES UTS's motions for summary judgment and summary adjudication. UTS has not met its initial burden of negating an essential element of each cause of action plaintiffs allege against UTS by the production of admissible evidence. The burden, therefore, does not shift to opposing parties to produce evidence of a material triable dispute.

Counsel for UTS shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final decision) may be attached to and incorporated in the proposed order in lieu of quoting same verbatim in the body of the document.